

Remaining Independent Claims

Independent claims 5, 9, 18, 24, and 28 are also allowable over Martin for at least similar reasons as set forth above with regard to claim 1, and further in view of the various differing features recited therein.

Moreover, the Office Action's arguments regarding obviousness do not address the above-discussed element missing from Martin. Even if modified as proposed, Martin still fails to teach or suggest using a start point corresponds to a first point along an order fulfillment process as claimed. Therefore, for this reason alone there presently stands no *prima facie* case of obviousness over Martin. In addition, the Office Action's arguments for obviousness do not rely on a valid motivation found in the prior art. For example, regarding claim 9, the Office Action states that:

It would have been obvious to one of ordinary skill in the art to generate a database with the summarized purchase order data for each customer containing the number of orders places and number delivered on time, as well as, the supplier, the buyer, and the start/end point pairs used to measure the on time delivery to enable the user to more accurately evaluate the on-time performance of shipments between customers and suppliers.

(Office Action, pp. 7-8). However, there does not appear to be any evidence as to why one would have determined, at the time of Applicant's invention, that the proposed modification would have been desirable. Nor is there any evidence that the prior art teaches that the proposed modification would have enabled a user "to more accurately evaluate the on-time performance of shipments between customers and suppliers" as concluded by the Office Action. Indeed, no prior art other than Martin is referenced by the Office Action, and so it appears that the only resource from which the Examiner might have drawn such a conclusion is Applicant's own specification. This, of course, is improper.

Instead of alleging a genuine motivation *in the prior art* to modify Martin to be configured in the particular manner claimed, the Office Action is improperly benefiting from 20/20 hindsight using Applicant's own specification to arrive at the particular claimed configuration. There is simply no teaching or suggestion of the specifically claimed combinations of features, nor is there any motivation in the prior art to combine features in the specific way claimed. As held by the U.S. Court of Appeals for the Federal Circuit, "[i]t is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teaching of the prior art...." *In re Fritch*, 972 F.2d 1260, 1266 (quoting *In re Fine*,

837 F.2d 1071, 1075, 5 USPQ 2d 1596, 1600 (Fed. Cir. 1988)). Yet this is exactly what the Office Action is attempting to do, but even worse; the Office Action has not shown that prior art even teaches all the pieces of the claimed invention.

For at least these reasons, it is submitted that a *prima facie* case of obviousness has not been made.

Dependent Claims

Claims 2-4, 6-8, 10-17, 19-23, 25-27, 29-31, and 47 are also allowable for at least those reasons that their respective independent claims are allowable, and further in view of the additional features recited therein.

For example, claims 2, 6, 25, and 29 each recites that the on time performance reports also include a number of line items delivered on time by the first supplier with respect to each of the plurality of start point/end point pairs. The Office Action alleges that the charts at col. 5, lns. 25-32 of Martin teach this. This portion of Martin contains three charts. As explained in Martin, the first chart is used if a customer measures performance in terms of dollars, the second chart is used if the customer measures performance in terms of units, and the third chart is used if the customer measures performance in terms of shipments or line items. Neither dollars, units, nor shipments/line items are start/end points as claimed. Indeed, none of these charts refer in any way to line items delivered on time by a first supplier with respect to each of the plurality of start point/end point pairs. Even ignoring for the moment that Martin does not even teach the claimed start points in the first place, these charts totally lack the claimed line items. As to the first chart, “Total Dollar Shipments” is the first line item, “On-Time Shipments” is the second line item, and “Percentage On-Time” is the third line item. None of these line items relate to each of a plurality of start/end point pairs as claimed. As to the second chart, “Total Units Shipped” is the first line item, “On-Time Units” is the second line item, and “Percentage On-Time” is the third line item. Again, none of these line items relate to each of a plurality of start/end point pairs as claimed. As to the third chart, “Total Shipments” is the first line item, “On-Time Shipments” is the second line item, and “Percentage On-Time” is the third line item. Again, none of these line items relate to each of a plurality of start/end point pairs as claimed.

As another example, as to claims 14 and 22, the Office Action fails to set forth a *prima facie* case of obviousness because it relies on improper hindsight to modify Martin to conveniently match the claimed invention: